

This Court denied a certificate of appealability when it dismissed this action. This Court will not issue a certificate of appealability because the grounds raised in the petition are wholly frivolous.

As a result, the motion is moot. Under the Rules of Appellate Procedure, petitioner may request a certificate of appealability from the Court of Appeals.

Alternatively, even if the Court were to construe the instant motion as a motion to reopen the time for filing an appeal, the Court would deny the motion. Under Federal Rule of Appellate Procedure 4(a),

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

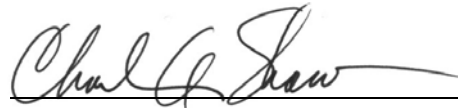
(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6).

The conditions listed in Rule 4(a)(6) are not satisfied because petitioner does not claim that he did not receive notice of the final judgment in this case within twenty-one days after entry. And the instant motion has not been filed in a timely fashion because it was filed more than ten months after the final judgment was entered. As a result, the Court cannot reopen the time for filing an appeal in this action.

Accordingly,

**IT IS HEREBY ORDERED** that petitioner's motion for leave to file a motion for certificate of appealability out of time is **DENIED**. [Doc. 10]

  
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**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 24th day of May, 2011.